

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES of AMERICA,

4 -against-

19 Cr. 379  
Plea

5 DAVID WINNE,

6 Defendant.  
7

8  
9 United States Courthouse  
10 White Plains, New York

11 May 23, 2019

12 THE HONORABLE JUDITH C. MCCARTHY,  
13 United States Magistrate Judge

14 GEOFFREY S. BERMAN  
15 United States Attorney for  
the Southern District of New York  
16 BY: JEFFREY C. COFFMAN  
JAMES McMAHON  
17 Assistant United States Attorneys

18  
19 MACHT & HARAN LLP  
Attorneys for David Winne  
20 BY: JEFFREY UDELL  
DIANA LEE  
21  
22  
23  
24  
25

1 THE CLERK: In the matter of United States of America  
2 versus David Winne.

3 Counsel, please state your appearance for the record.

4 MR. COFFMAN: Assistant United States Attorneys  
5 Jeffrey Coffman and Jay McMahon with Special Agent Cynthia  
6 Fraterrigo from the Food and Drug Administration, Office of  
7 Criminal Investigations. Good afternoon, your Honor.

8 THE COURT: Good afternoon.

9 MR. UDELL: Jeffrey Udell, Walden Macht & Haran for  
10 Mr. Winne. Good afternoon, your Honor.

11 THE COURT: Good afternoon.

12 MS. LEE: Diana Lee from Walden Macht & Haran for  
13 Mr. Winne.

14 THE COURT: Good afternoon, Ms. Lee. Good afternoon,  
15 Ms. Udell and good afternoon Winne.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: Mr. Winne. Apologize.

18 Okay, Mr. Coffman, what are we here for?

19 MR. COFFMAN: Your Honor, we're here for a change of  
20 plea.

21 THE COURT: Thank you.

22 Okay, Mr. Winne, if you could please stand. I want  
23 to advise you that this is not a trial. It's my understanding  
24 that you've decided to enter a guilty plea. This proceeding is  
25 for the purpose of ensuring that you are aware of your rights

1 in connection with your plea and that any waiver of those  
2 rights is knowing and voluntary prior to entering your plea.

3 Mr. Winne, if at any time you do not understand what  
4 I say to you or you do not hear what I say to you, please  
5 interrupt me so that I can repeat and explain what I've said.  
6 If you want to confer with your attorney regarding anything I  
7 say, please interrupt me so that you can do that; do you  
8 understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: I also want to advise you that you have  
11 the right to be represented by counsel throughout the entire  
12 case and you may consult with your attorney at any stage of  
13 this proceeding. You also have the right to remain silent.  
14 Any statement that you do make may be used against you. You  
15 have this right to remain silent even if you've already made  
16 statements to law enforcement officers; do you understand?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Ms. Hummel, could you please place  
19 Mr. Winne under oath off affirmation.

20 (David Winne sworn)

21 THE COURT: It's important for you to understand that  
22 if you knowingly make a false statement during these  
23 proceedings, you could be subject to prosecution for the crime  
24 of perjury or for making a false statement to the Court and you  
25 could face a punishment up to five years imprisonment and a

1 \$250,000 fine for committing such a crime. Such punishment  
2 would be separate and apart from any sentence you may be facing  
3 on the crime charged in the felony information; do you  
4 understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: What is your full name?

7 THE DEFENDANT: David Roy Winne.

8 THE COURT: How old are you?

9 THE DEFENDANT: Fifty-four.

10 THE COURT: Are you a United States citizen?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: How far did you go in school?

13 THE DEFENDANT: Bachelor of science.

14 THE COURT: Have you currently or have you been  
15 recently under the care of a doctor or psychiatrist for any  
16 reason?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Have you taken any mind-altering drugs,  
19 medicines or pills or consumed any alcohol in the last 24  
20 hours?

21 THE WITNESS: No, your Honor.

22 THE COURT: Have you ever been hospitalized or  
23 treated for alcoholism or drug addiction?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Is your mind clear today?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Do you understand what's happening at  
3 this proceeding?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Does either counsel have any objection to  
6 the defendant's competence to proceed at this time?

7 MR. COFFMAN: No, your Honor.

8 MR. UDELL: No, your Honor.

9 THE COURT: Mr. Winne, this proceeding is called a  
10 plea allocution. I want you to understand that you have an  
11 absolute right to have this plea allocution conducted before a  
12 United States District Judge. It is the District Judge who  
13 will impose the sentence in this case. If you consent, then I  
14 will conduct the plea allocution and I will then make a report  
15 to the District Judge in which I will recommend whether or not  
16 the District Judge should accept the plea of guilty. I will  
17 make that recommendation based on the information that is  
18 brought out during today's proceedings.

19 It is important for you to understand that the Court  
20 will not accept your plea unless the Court is satisfied that  
21 you fully understand all of your rights and that you are, in  
22 fact, guilty; do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you understand that you have an  
25 absolute right to have this plea allocution conducted before a

1 United States District Judge?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Is it your wish that I conduct the plea  
4 allocution?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Mr. Udell, did your client sign a consent  
7 to proceed before a United States Magistrate Judge on a felony  
8 plea allocution?

9 MR. UDELL: He did, your Honor. I've explained it to  
10 him and he wishes to proceed before your Honor.

11 THE COURT: Thank you.

12 Ms. Hummel, could you please have the defendant  
13 identify his signature on the form?

14 THE CLERK: Mr. Winne, I show you this consent to  
15 proceed before a United States Magistrate Judge on a felony  
16 plea allocution form which you've signed and dated today.  
17 May 23, 2019. Is that your signature?

18 THE DEFENDANT: Yes.

19 THE CLERK: Before signing this form, did you have a  
20 chance to read it and review it with your attorney?

21 THE DEFENDANT: Yes.

22 THE CLERK: Thank you.

23 THE COURT: So I have before me the consent to  
24 proceed before a United States Magistrate Judge on a felony  
25 plea allocution that you've signed, Mr. Winne. What this form

1 says is that knowing you have the right to have this plea taken  
2 by a United States District Judge, you're agreeing to have the  
3 plea taken by me, a United States Magistrate Judge; is that  
4 correct?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Before you signed the form, did your  
7 lawyer explain it to you?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Did anyone threaten or coerce you or  
10 promise you anything in order to get you to sign the consent  
11 form?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Did you sign the form freely and  
14 voluntarily?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Counsel, do either of you know of any  
17 reason why the waiver and consent to proceed with this plea  
18 allocution before a United States Magistrate Judge should not  
19 be accepted?

20 MR. COFFMAN: No, your Honor.

21 MR. UDELL: No, your Honor.

22 THE COURT: I find that the defendant, David Winne,  
23 is fully competent and understands the proceeding before him.  
24 I also find he's capable of waiving his right to appear before  
25 a United States District Judge in order to enter his guilty

1 plea, and I therefore accept the consent form, which has been  
2 signed and which is now part of the court record. The consent  
3 form will be marked as Court's Exhibit 1 and will remain in the  
4 court file.

5 So, Mr. Winne, I've been informed that you wish to  
6 change your plea and enter a plea of guilty as to certain  
7 charges; is that correct?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Before deciding whether to accept your  
10 guilty plea, I'm going to ask you certain questions. It's very  
11 important you answer these questions honestly and completely.  
12 The purpose of these proceedings is to make sure that you  
13 understand your rights, to decide whether you're pleading  
14 guilty of your own free will, and to make sure you're pleading  
15 guilty because you are guilty and not for some other reason.

16 Do you understand what time saying?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: If you don't understand any of the  
19 questions, or if you want at any time to consult with your  
20 lawyer, please say so, because it is important you understand  
21 every question before you answer it; okay?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: So I have before me a copy of the  
24 information containing the charges against you. This  
25 information is a two-count information.



1 Count One charges you with conspiracy to commit wire  
2 fraud from in or about 1987 through in or about April 2017 in  
3 violation of Title 18, United States Code, Sections 1349 and  
4 1343.

5 Count Two charges you with wire fraud from in or  
6 about 1987 to in or about April 2017 in violation of Title 18,  
7 USC, Sections 1343 and 2.

8 Have you seen a copy of this information?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Have you had an opportunity to read it?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Do you understand what it says?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Do you want me to read it in open court?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: Have you had time to talk to your  
17 attorney about these charges and about how you wish to plead?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Have you discussed with your attorney the  
20 charges against you including the charges you intend to plead  
21 guilty to as well as any other charges that the government may  
22 have made in this case?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Has your attorney told you the  
25 consequences of pleading guilty?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Are you satisfied with your attorney's  
3 representation of you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Have you told your attorney everything  
6 you know about this case?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: So who has the original plea agreement?

9 MR. COFFMAN: I do, your Honor.

10 THE COURT: Okay, Ms. Hummel could you get the  
11 original plea agreement and have the defendant identify his  
12 signature on the last page of the agreement?

13 The original plea agreement is going to be marked as  
14 a government exhibit and will remain in the custody of the  
15 Government's attorney.

16 THE CLERK: Mr. Winne, I show you this plea agreement  
17 which is dated April 16, 2019, and which you've signed and  
18 dated today, May 23, 2019. Is that your signature?

19 THE DEFENDANT: Yes.

20 THE CLERK: Before signing this agreement, did you  
21 have a chance to read it and review it with your attorney?

22 THE DEFENDANT: Yes.

23 THE CLERK: Thank you.

24 THE COURT: Mr. Udell, did you review each and every  
25 part of this plea agreement with your client?

1 MR. UDELL: I did, your Honor.

2 THE COURT: Mr. Winne, are you satisfied you  
3 understand this entire plea agreement which your lawyer has  
4 reviewed with you?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you have any questions for your lawyer  
7 or for me about what this plea agreement says?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Does this plea agreement contain the  
10 complete understanding between you and the government in  
11 connection with this case?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that anything which is  
14 not set forth in the plea agreement or which is not told to me  
15 at this time on the record will not be binding on the outcome  
16 of your case?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And Mr. Coffman, is there anything beyond  
19 the written plea agreement that the Court should be aware of?

20 MR. COFFMAN: No, your Honor.

21 THE COURT: Mr. Udell, is there any other agreement  
22 the Court should know about?

23 MR. UDELL: No, your Honor.

24 THE COURT: Mr. Winne, did you sign the plea  
25 agreement freely and voluntarily?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did anyone force you or coerce you or  
3 threaten you or promise you anything other than what is set  
4 forth in the written plea agreement in order the get you to  
5 sign the plea agreement?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: So I want to go over certain aspects of  
8 the plea agreement with you.

9 If you are convicted of the charges contained in  
10 Count One of the felony information and that's the conspiracy  
11 to commit wire fraud charge account, either after trial or by a  
12 plea of guilty, you would be subject to a maximum sentence of  
13 20 years imprisonment, a maximum term of three years supervised  
14 release, a maximum fine pursuant to Title 18, United States  
15 Code, Section 3571 of the greatest of \$250,000, twice the gross  
16 pecuniary gain derived from the offense or twice the gross  
17 pecuniary loss to a person other than you as a result of the  
18 offense and a mandatory \$100 special assessment. Do you  
19 understand that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: If you are convicted of the charges  
22 contained in this felony information, Count Two of it, which is  
23 the count that charges you with wire fraud, if you are  
24 convicted either after trial by plea of guilty you would be  
25 subject on Count Two to a maximum sentence of 20 years

1 imprisonment, a maximum term of three years supervised release,  
2 a maximum fine pursuant to Title 18, United States Code,  
3 Section 3571 of the greatest of \$250,000, twice the gross  
4 pecuniary gain derived from the offense or twice the gross  
5 pecuniary loss to a person other than you as a result of the  
6 offense and a mandatory \$100 special assessment; do you  
7 understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Do you also understand that the total  
10 maximum sentence of incarceration on the two counts together is  
11 40 years imprisonment?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: If you are sentenced to a term of  
14 imprisonment, even if you are sentenced to the maximum term of  
15 imprisonment, and if you are also sentenced to a term of  
16 supervised release, and if you then violate the conditions of  
17 supervised release, you could be sentenced to an additional  
18 term of imprisonment for violating your conditions of  
19 supervised release, which in this case would be an additional  
20 term of up to three years; do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: In addition, if you violate the  
23 conditions of your supervised release, you would not receive  
24 credit for any time already served in prison or for time served  
25 on supervised release; do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: You're also subject to the possibility of  
3 an order of forfeiture or restitution. Under this plea  
4 agreement, Mr. Winne, you're agreeing to make restitution in an  
5 amount to be specified by the Court. You're also admitting to  
6 the forfeiture allegation with respect to Count One and Two of  
7 the information and agree to forfeit to the United States a sum  
8 of money in US currency representing proceeds traceable to the  
9 commission of these two offenses set forth in Count One and  
10 Count Two; do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Mr. Coffman, what's the maximum amount of  
13 restitution and forfeiture that Mr. Winne is exposed to?

14 MR. COFFMAN: Your Honor, by statute, there is no  
15 maximum amount, and I do not have a precise estimate for the  
16 amount of forfeiture in this case; however, we do know that the  
17 revenue of AMA Laboratories in the relevant years was in excess  
18 of \$25 million.

19 THE COURT: Okay, thank you.

20 Do you understand that, Mr. Winne, that they don't  
21 know at this point what it is, but it's the proceeds of the  
22 crime, and if the revenues were in excess of \$25 million, you  
23 could face a higher restitution amount or forfeiture amount?

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1           THE COURT: Okay. Do you understand that these are  
2 the possible sentences that could be imposed following a plea  
3 of guilty in this matter?

4           THE DEFENDANT: Yes, your Honor.

5           THE COURT: I believe you mentioned that you are a US  
6 citizen; is that correct?

7           THE DEFENDANT: Yes, your Honor.

8           THE COURT: Do you also understand that you are  
9 pleading guilty to a felony offense and that such an  
10 adjudication may deprive you of certain valuable civil rights,  
11 which may include the right to vote, the right to hold public  
12 office, the right to serve on a jury, the right to possess any  
13 type of firearm, including rifles and shotguns, the right to be  
14 considered for certain types of employment or to be bonded to  
15 serve in the United States military and the right to possess or  
16 obtain certain government issued licenses, including licenses  
17 that may be required in certain professions and occupations?

18           Do you understand that?

19           THE DEFENDANT: Yes, your Honor.

20           THE COURT: Do you understand that these are the  
21 possible legal consequences of a guilty plea?

22           THE DEFENDANT: Yes, your Honor.

23           THE COURT: Do you understand that the United States  
24 Sentencing Commission has issued guidelines for judges to  
25 follow in determining the appropriate sentence in a criminal

1 case?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Do you also understand these guidelines  
4 are not mandatory but they must be considered by the Court  
5 along with other factors listed at 18 U.S.C., section 3553 when  
6 the judge determines the appropriate sentence to impose  
7 including possible departures from the guidelines?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: I want to go over the plea agreement as  
10 it relates to your cooperation. I first want to ask if you and  
11 your attorney have talked about how the sentencing guidelines  
12 will be calculated in your case?

13 MR. UDELL: May I have a moment, your Honor?

14 (Defense counsel and defendant confer)

15 THE DEFENDANT: Yes, your Honor, we spoke about that.

16 THE COURT: Okay, I want to go over the cooperation  
17 agreement so you understand the terms of it and this plea  
18 agreement.

19 Under this plea agreement you are agreeing to  
20 truthfully and completely disclose all information with respect  
21 to the activities of you and others concerning all matters by  
22 which the US Attorney's office inquires of you and that  
23 information can be used for any purpose; do you understand  
24 that?

25 THE DEFENDANT: Yes, your Honor.



1           THE COURT: And you have to cooperate fully with the  
2 US Attorney's office, the Federal Bureau of Investigation, the  
3 Food and Drug Administration, Office of Criminal  
4 Investigations; do you understand that?

5           THE DEFENDANT: Yes, your Honor.

6           THE COURT: And anyone else that the US Attorney's  
7 office designates, law enforcement that they designate that you  
8 have to speak to; do you understand that?

9           THE DEFENDANT: Yes, your Honor.

10          THE COURT: You have to attend all the meetings that  
11 they request your presence at, you have to provide the office  
12 with any document or record or tangible evidence with which  
13 they inquire of you, and you have to truthfully testify before  
14 the grand jury and at any trial or court proceeding with  
15 respect to any matters about which the US Attorney's office may  
16 request your testimony; do you understand that?

17          THE DEFENDANT: Yes, your Honor.

18          THE COURT: You also have to bring to US Attorney's  
19 office any crime which you've committed, any administrative,  
20 civil or criminal proceedings, investigations or prosecutions  
21 of which you've been a subject, target, party or witness; do  
22 you understand that?

23          THE DEFENDANT: Yes, your Honor.

24          THE COURT: You also, of course, have to commit no  
25 further crimes whatsoever; do you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If the US Attorney's office determines  
3 that you have provided substantial assistance in an  
4 investigation and prosecution, and if you fully complied with  
5 the understanding specified in this plea agreement, the  
6 US Attorney's office will file a motion pursuant to section  
7 5K1.1 of the sentencing guidelines requesting the Court to  
8 sentence you in light of the facts set forth in section  
9 5K1.1(a)(1) through (5); do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If the office of the US Attorney  
12 determines that you have not provided substantial assistance in  
13 investigation and prosecution or that you have violated any  
14 provision of the plea agreement, that determination will  
15 release the US Attorney's office from any obligation to file a  
16 motion pursuant to Section 5K1.1 of the sentencing guidelines  
17 but will not entitle you to withdraw your guilty plea once it's  
18 been entered; do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Also, should the US Attorney's office  
21 determine after they filed the motion pursuant to Section 5K1.1  
22 of the Sentencing Guidelines and/or 18 U.S.C. Section 3553(e)  
23 that you violated any provision of the plea agreement, the  
24 US Attorney's office has the right to withdraw their motion; do  
25 you understand that?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: That would not, however, give you the  
3 right to withdraw your guilty plea once it's been entered; do  
4 you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Do you understand that the District Judge  
7 will consider the guidelines, will consider the motion made by  
8 the US Attorney's office, if one is made, but will impose a  
9 sentence in accordance with -- has the sole discretion in which  
10 he is going to sentence you, and under the statute he can  
11 sentence you up to 40 years in prison; do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand the Court will not be  
14 able to determine the appropriate sentence until after the  
15 presentence report has been prepared and until you and your  
16 attorney, as well as the government, have had an opportunity to  
17 challenge the facts reported in the presentence report as well  
18 as the calculation of the sentencing guideline range and any  
19 sentence recommendation in that report?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you also understand that if there are  
22 any objections to the presentence report, that those objections  
23 will be ruled on by the Court, and if necessary, a hearing will  
24 be held to determine what information is relevant to the  
25 Court's determination of a sentence?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And under this agreement you're waiving  
3 any and all right to withdraw your plea or attack your  
4 conviction either on direct appeal or collaterally on the  
5 ground that the government has failed to produce any discovery  
6 material, Jencks Act material, exculpatory material pursuant to  
7 *Brady versus Maryland*, other than information establishing your  
8 factual innocence or impeachment material pursuant to *Giglio*  
9 *versus United States* that has not already been produced as of  
10 the date of the signing of this agreement?

11 THE DEFENDANT: Yes, I understand, your Honor.

12 THE COURT: Do you understand if you disagree with  
13 the Court's sentencing decision, that will not give you a basis  
14 for withdrawing your plea of guilty?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you also understand that parole has  
17 been abolished, and if you are sentenced to a term of  
18 imprisonment, you will not be eligible for early release on  
19 parole?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Do you understand you do not have to  
22 plead guilty and you have an absolute right to plead not guilty  
23 and to have the matter go to trial by judge or by jury?

24 THE DEFENDANT: Yes.

25 THE COURT: Do you understand that if you choose to

1 plead not guilty, you are entitled to a speedy and public trial  
2 of your case?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Do you understand at any trial of this  
5 matter you would be entitled to the presumption of innocence  
6 and that the presumption would remain with you until the  
7 government proves each and every element of the crime charged  
8 beyond a reasonable doubt to the satisfaction of a judge, if  
9 it's a judge trial, or to the unanimous satisfaction of the  
10 jury if it's a jury trial?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: At such trial you would have the right,  
13 with the assistance of your attorney, to confront and cross  
14 examine the witnesses against you. You would have the right to  
15 call witnesses to testify for you and to have subpoenas issued  
16 to compel witnesses to give testimony. You would also have the  
17 right to testify at your trial, but you could not be forced to  
18 testify. If you decide not to testify, your decision to remain  
19 silent could not be held against you in any way. Do you  
20 understand all of that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: At your trial you'd also have the right,  
23 which I've already mentioned, to the assistance of an attorney,  
24 and to have an attorney appointed to represent you if you could  
25 not afford counsel.

1 Do you understand that if you plead guilty to the  
2 charges in this felony information that you would give up your  
3 right to a trial, and except for the right to counsel, you  
4 would give up all the other rights which I've explained to you  
5 here?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Counsel, is there anything else in the  
8 plea agreement that you would like me to go over or highlight  
9 for Mr. Winne?

10 MR. COFFMAN: No, your Honor.

11 MR. UDELL: No, your Honor.

12 THE COURT: Thank you.

13 Mr. Winne, have you clearly heard and understood  
14 everything I've said to you?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Do you have any questions for me or for  
17 your attorney about anything I've said or anything I've asked  
18 you?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: You can be seated.

21 You can proceed, Mr. Coffman. Can you tell me what  
22 the elements of the offense are and what is the government  
23 prepared to prove at trial in order to establish those  
24 elements.

25 MR. COFFMAN: Your Honor, if this matter proceeded to

1 trial, the government would prove the following two elements  
2 beyond a reasonable doubt with respect to Count One, conspiracy  
3 to commit wire fraud:

4 First, that there was an unlawful agreement between  
5 two or more people, the unlawful object of the agreement being  
6 to commit wire fraud; and

7 Second, that the defendant knowingly and willfully  
8 entered into that agreement.

9 For Count One, the government would not have to prove  
10 that the substantive crime of wire fraud was, in fact,  
11 committed but rather it was the object of the conspiracy.  
12 Nevertheless, I set forth the elements of the wire fraud now  
13 because it's the object of the offense charged in Count One,  
14 also because these are the elements the government would prove  
15 beyond a reasonable doubt with respect to Count Two, the  
16 substantive wire fraud count, and there are three elements to  
17 the wire fraud offense:

18 First, that the defendant executed a scheme or  
19 artifice to defraud or to obtain money or property by  
20 materially false pretences, representations or promises;

21 Second, that the defendant knowingly and willfully  
22 participated in a scheme or artifice to defraud with knowledge  
23 of its fraudulent nature and with specific intent to defraud;  
24 and

25 Third, that there was the use of interstate wires in

1 furtherance of the fraud.

2           The government would also prove by a preponderance of  
3 the evidence that venue in the Southern District of New York is  
4 proper.

5           Specifically, the government would prove at trial  
6 beyond a reasonable doubt that beginning in 1987 and continuing  
7 to April 2017, the defendant willfully and knowingly conspired  
8 with others to commit wire fraud and committed wire fraud.

9           The government would prove that the defendant was a  
10 technical director of AMA Laboratories in Rockland County,  
11 New York. AMA tested the efficacy and safety of cosmetics,  
12 sunscreens and other products on specified numbers and  
13 volunteer panelists in exchange for fees paid by consumer  
14 products companies. From at least 1987 through April 2017, the  
15 defendant and other employees of the laboratory tested products  
16 on materially lower numbers of panelists than the number  
17 specified by the laboratory's customers. The defendant and  
18 other laboratory employees then falsely represented to the  
19 laboratory's customers that they had tested the products on the  
20 number of panelists specified by the laboratory's customers.

21           The defendant and other laboratory employees also  
22 made materially false and misleading statements about the  
23 results of the tests to the laboratory's customers.

24           The defendant and other laboratory employees  
25 initially sent the laboratory's reports containing the false



1 information to the laboratory's customers via interstate  
2 facsimile and more recently sent them via email communications  
3 interstate.

4           The governments evidence would include documentary  
5 evidence including email communications with victims and  
6 fraudulent reports and panelist data seized from the premises  
7 of AMA. It would include testimony from other AMA employees  
8 regarding the practices of AMA described previously. It would  
9 include testimony from victim companies and it would include  
10 the defendant's statements.

11           The Government's evidence as to venue would include  
12 that AMA and the defendant were physically located in and  
13 operated from New City in Rockland County in the Southern  
14 District of New York.

15           THE COURT: Thank you, Mr. Coffman.

16           THE COURT: Okay, Mr. Winne, can you stand.

17           I just want to know, did you hear what Assistant  
18 US Attorney Coffman just said?

19           THE DEFENDANT: Yes, your Honor.

20           THE COURT: Okay. So at this time, how do you wish  
21 to plead to the charges?

22           THE DEFENDANT: Guilty as charged, your Honor.

23           THE COURT: Has anyone threatened you or coerce you  
24 or pressured you improperly in order to get you to plead guilty  
25 to these charges?

1 THE DEFENDANT: No, your Honor.

2 THE COURT: Has anyone made any promises to you in  
3 order to induce you to plead guilty?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Has anyone made any specific promises to  
6 you about what the sentence of the Court will be?

7 THE DEFENDANT: No, your Honor.

8 THE COURT: Can you tell me in your own words what  
9 you did to commit this crime, these crimes?

10 THE DEFENDANT: Yes, your Honor.

11 At all times mentioned in the information from at  
12 least 1987 through April of 2017, I was employed by AMA  
13 Laboratories Inc. in Rockland County. AMA is a for-profit  
14 company that is hired by other companies who sell cosmetics,  
15 sunscreens and similar products. These other companies who are  
16 AMA customers engaged AMA to run tests on the customer's  
17 products to determine whether those products are safe and  
18 effective, and AMA does so through the use of volunteer panels  
19 recruited by AMA to take part in the tests in AMA laboratories.  
20 For most of my time at AMA I was the company's technical  
21 director.

22 When AMA would run these tests on the customers'  
23 products through the use of volunteer panels, it was supposed  
24 to inform its customers via written report how many panelists  
25 took part in the testing, along with the results of the tests.

1           In the 1980s and 1990s, these reports were typically  
2 faxed to the customers, while in more recent years the reports  
3 were emailed. Many of these faxes and emails were sent to  
4 customers outside of the State of New York.

5           Contrary to what was represented to AMA's customers  
6 in the fax and emailed reports, AMA would typically use far  
7 fewer panelists to perform the tests than the number of  
8 panelists required by the customers and claimed to be used by  
9 AMA in the written reports. In other words, AMA regularly used  
10 an insufficient number of panelists to perform the tests and  
11 then regularly misrepresented to its customers in the fax and  
12 email reports how many panelists were used.

13           While I did not directly supervise the conducting of  
14 the test as the company's technical director, I was aware of  
15 the company's routine practice of shorting panelists and I  
16 often caused the written reports to be transported via  
17 facsimile or email knowing that they falsely and deceptively  
18 overstated the number of panelists actually used by AMA to  
19 conduct the tests.

20           I take full responsibility for my wrongful conduct.  
21 I'm ashamed of my actions. I apologize to the Court and the  
22 victims for what I've done, and to my colleagues in the  
23 industry and the customers of AMA.

24           THE COURT: Thank you.

25           Did you commit these acts knowingly and willfully?

Angela O'Donnell, RPR, 914-390-4025

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Did you know it was against the law to do  
3 what you were doing?

4 THE DEFENDANT: Not necessarily, your Honor. Not  
5 necessarily a federal crime. I knew it was wrong. I did know  
6 it was wrong.

7 THE COURT: And it was illegal.

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Is there anything else which either  
10 counsel believes the Court needs to elicit from the defendant  
11 before making the recommendation contemplated by Rule 11 of the  
12 Federal Rules of Criminal Procedure?

13 MR. COFFMAN: Not the from the government, your  
14 Honor.

15 MR. UDELL: No, your Honor.

16 THE COURT: Thank you.

17 THE COURT: Mr. Udell, do you know of any reason why  
18 the Court should not recommend acceptance of your client's plea  
19 of guilty in this matter?

20 MR. UDELL: I don't, your Honor.

21 THE COURT: Mr. Coffman, do you know any reason why  
22 the Court should not recommend acceptance of the plea?

23 MR. COFFMAN: No, your Honor.

24 THE COURT: Mr. Winne, in light of everything that's  
25 been said here today, is it still your wish to plead guilty to

1 the charge contained in the felony information?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: On the basis of the allocution and the  
4 responses to my questions, I find the defendant is fully  
5 competent and capable of entering an informed plea.

6 I am satisfied, Mr. Winne, that you understand your  
7 rights, including your right to go to trial, that you're aware  
8 of the consequences of your plea, including the sentence that  
9 may be imposed. Based on this plea allocution, I find the plea  
10 is knowing and voluntary and is supported by an independent  
11 factual basis for each and every element of the crime charged.

12 Accordingly, I respectfully report and recommend to  
13 Judge Briccetti that the plea be accepted and the defendant be  
14 adjudged guilty of the offenses charged in the felony  
15 information.

16 I'm going to direct that a presentence investigation  
17 be conducted by the United States Department of Probation and  
18 that a presentence report be prepared.

19 I understand that this is a cooperation agreement and  
20 the timing of these reports may be different than what the  
21 standing order is, but I'm going to impose the standing order  
22 in this case which requires that within 14 days from today,  
23 Mr. Winne, you need to meet with the Department of Probation,  
24 your attorney can accompany you there, for an interview. And  
25 what I want to make sure you understand is whether you do it

1 within two weeks or if that gets adjourned, at the time of that  
2 interview you have to be fully honest and truthful during that  
3 interview, because if it comes to Court's attention that you've  
4 provided false, incomplete or misleading information, that may  
5 be held against you at time of sentencing; do you understand  
6 that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: And Mr. Coffman, the prosecution case  
9 summary for purposes of the presentence report is to be  
10 delivered to the Probation Department no later than 13 days  
11 from today. Today is May 23rd, so that is June 6, 2019.  
12 Again, because this is a cooperation agreement, if the parties  
13 need additional times for either of this, or there's no reason  
14 to do it at this time, please make that request to Judge  
15 Briccetti. Otherwise they're to interview and the report is  
16 due by June 6, 2019.

17 I'm going to ask the court reporter provide a  
18 transcript of these proceedings been 30 days setting forth my  
19 report and recommendation to Judge Briccetti and the transcript  
20 is to come to me first for review

21 Since you've pled guilty to a cooperation agreement,  
22 Judge Briccetti has not set a sentencing date yet; however, he  
23 has set a control date of November 29, 2019, for the parties to  
24 submit a letter with respect to the defendant's cooperation.  
25 Okay?

1 MR. COFFMAN: Thank you, your Honor.

2 THE COURT: And please follow up with Judge

3 Briccetti's chambers to confirm that date. Okay?

4 Anything else from either side?

5 MR. UDELL: No, your Honor.

6 MR. COFFMAN: No. Thank you for making time, your

7 Honor.

8 THE COURT: Thank you very much, counsel.

9 Mr. Winne, good luck to you.

10 Have a good day everyone.

11 (Proceedings concluded)

12 CERTIFICATE: I hereby certify that the foregoing is a true and  
13 accurate transcript, to the best of my skill and ability, from  
my stenographic notes of this proceeding.

14 -----  
Angela A. O'Donnell, RPR, Official Court Reporter, USDC, SDNY

15

16

17

18

19

20

21

22

23

24

25